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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,523	02/28/2002	Jeffrey Charles Trewella	JCT002	7718

7590 08/10/2005
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EXAMINER

LANKFORD JR, LEON B

ART UNIT PAPER NUMBER

1651

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,523

Applicant(s)

TREWELLA, JEFFREY CHARLES

Examiner

Leon Lankford

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's arguments have been fully considered but they are not persuasive. The rejections are maintained for the reasons of record. The arguments made are essentially the same as those previously offered and discussed and still are not persuasive to overcome the rejections of record. The prior art clearly indicates that umbilical cord stem cells are valuable to the donor as both a potential therapeutic and as a sellable commodity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize both of these values by selling some of the cells and storing others. This invention is akin to the idea of owning 2 acres of land and selling one of said acres in order to build a house on the remaining acre. Another analogous method would be selling of one's sperm to make money to raise your child or to facilitate IVF. It could even be argued that the claimed invention would have been akin to paying for a safety deposit box for storing your savings bonds by cashing one of said bonds. It would have been obvious at the time the invention was made to sell some of a valuable asset (in this case stem cells) in order to make money for any reason including defraying the storage cost of the rest of the cells.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11 – 14 and 21 – 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez-Ryan in view of Annas.

Applicant claims a method for paying storage costs of cord blood, the method comprising dividing the blood into 2 portions both with stem cells, selling one portion and using the monies made to pay for the second portion. The method further includes recovering the blood from a donor followed by concentrating and stabilizing the blood before dividing the cord blood.

Gonzalez-Ryan discloses the costs of storing cord blood and options for paying storage costs (p.106). The blood is collected, stabilized (p.107) and concentrated (p.108).

Gonzalez-Ryan does not specifically teach the method of payment as claimed. However, Annas discloses companies selling cord blood for therapeutic use in the event a donor cannot pay the storage costs (p.1524). At the time of the claimed invention, one of ordinary skill in the art would have been motivated to pay for storing cord blood in any way available, since it was known to be costly. Moreover, one of ordinary skill in the art would have been motivated by Annas to sell cord blood in order to pay storage costs, as it was known to have monetary value as evidenced by Annas.

3. Claims 11 - 14 and 17 - 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over "Blood Plasma Pooling" in view of Annas.

Applicant claims a method for paying storage costs of cord blood, the method comprising dividing the blood into 2 portions each containing stem cells, selling one portion and using the monies made to pay for the second portion. The method further includes recovering the blood from a donor followed by concentrating, purifying and amplifying the blood before dividing the cord blood.

"Blood Plasma Pooling" teaches methods wherein blood is collected, purified, filtered, concentrated and pooled (amplifying) before dividing into aliquots for storage (p.1 - 5).

"Blood Plasma Pooling" does not teach the method of payment as claimed. However, Annas discloses companies selling cord blood for therapeutic use in the event a donor cannot pay the storage costs (p.1524). At the time of the claimed invention, one of ordinary skill in the art would have been motivated to pay for storing cord blood in any way available, since it was known to be costly. Moreover, one of ordinary skill in the art would have been motivated by Annas to sell cord blood in order to pay storage costs, as it was known to have monetary value as evidenced by Annas.

4. Claims 11 - 14, 17 - 18 and 21 - 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kline and/or Wolf, Jr. in view of Annas.

Applicant claims a method for paying storage costs of cord blood, the method comprising dividing the blood into 2 portions each containing stem cells, selling one portion and using the monies made to pay for the second portion. The method further includes recovering the blood from a donor followed by concentrating, purifying and stabilizing the blood before dividing the cord blood.

Kline teaches methods where cord blood is collected, stabilized, fractionated (purified) and concentrated (p.824). Kline discloses storing cord blood and the idea of selling the cord blood for profit when one can no longer pay for storage (p.827).

Wolf, Jr. teaches methods of processing and storing cord blood wherein the blood is collected, concentrated, purified and stabilized prior to dividing and storage (col.1 line 16-25, col.4 line 29-41).

The references do not teach the method of payment as claimed. However, Annas discloses companies selling cord blood for therapeutic use in the event a donor cannot pay the storage costs (p.1524). At the time of the claimed invention, one of ordinary skill in the art would have been motivated to pay for storing cord blood in any way available, since it was known to be costly. Moreover, one of ordinary skill in the art would have been motivated by Annas to sell cord blood in order to pay storage costs, as it was known to have monetary value as evidenced by Annas.

5. Claims 11 - 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Boyse in view of Annas.

Applicant claims a method for paying storage costs of cord blood, the method comprising dividing the blood into 2 portions each containing stem cells, selling one portion and using the monies made to pay for the second portion. The method further includes recovering the blood from a donor followed by concentrating, diluting, purifying, amplifying and stabilizing the blood before dividing the cord blood.

Boyse teaches methods for storing cord blood, the method comprising collecting blood, stabilizing, concentrating, purifying (col.18), diluting and amplifying (col.18-19) fractions of the blood for cryogenic storage.

The references do not teach the method of payment as claimed. However, Annas discloses companies selling cord blood for therapeutic use in the event a donor cannot pay the storage costs (p.1524). At the time of the claimed invention, one of ordinary skill in the art would have been motivated to pay for storing cord blood in any way available, since it was known to be costly. Moreover, one of ordinary skill in the art would have been motivated by Annas to sell cord blood in order to pay storage costs, as it was known to have monetary value as evidenced by Annas.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

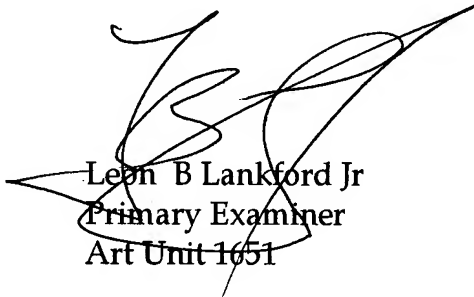
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon Lankford whose telephone number is 571-272-0917. The examiner can normally be reached on Mon-Thu 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leon B Lankford Jr
Primary Examiner
Art Unit 1651